

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
BEAUMONT DIVISION

|                                   |   |                        |
|-----------------------------------|---|------------------------|
| Bruce R. Merryman<br>Plaintiff    | § | Civil Action           |
| vs.                               | § |                        |
| Bryan Collier, ETAL<br>Defendants | § | Cause no. 1:20-CV-0001 |

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PLAINTIFF'S MOTION TO AMEND HIS  
COMPLAINT TO ADD NEWLY EXHAUSTED  
CLAIMS, FED. R. CIV. P. 15

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TO THE HONORABLE JUDGE of said Court

Plaintiff, Bruce Merryman, Herby Respectfully Request to amend his § 1983 civil action, Per the Federal Rule of Civil Procedure - 15, which permits a plaintiff to amend his Complaint to add new claims that have only been exhausted after the commencement of his lawsuit. e.g. Mattox V. Edelman, 851 F.3d 583 (6<sup>th</sup> cir 2017)

Plaintiff filed a step one grievance #2021148636 on August-11, 2021 and on September-6, 2021 filed a step two grievance.

In both step one and two the response was: There is no evidence to substantiate your allegation; The air conditioning

thermostat is working properly and there is no mold on the concrete slab where the unit is placed; No further action from this office is warranted. per Step one grievance.

Step two grievance states: The central grievance office has completed its investigation into your step 2; You were appropriately answered at Step 1 level; Maintenance Supervisor Sanders and officer Holman were contacted and state there is no mold or algae on the concrete pad and the A/C thermostat is working properly; No further action warranted; December-2, 2021 response date.

The Vent from the A/C and heating unit above C-29-Top does have black on the louvers and is the incoming air duct, and when C-29-Top did address the issue of black contents on the duct vent louvers, the officer stated he was only in C-dorm to clean the air return duct and fans only. C-29-Top did collect contents from the duct vent louver above his bed and backs this claim up; DeRoy Stenberg 29CT and see; Exhibit - A, which has black contents on it and was bagged and sent on Exhibit - A.

Plaintiff watched maintenance and inmates clean under the intact return air, which is a part of the A/C and Heating system installed because of plaintiff's §1983 civil suit 1:20-cv-0001. There was 18 new A/C and Heating systems installed, one for each dorm on Le Blanc Unit.

As stated in plaintiff's grievance process # 2021148636: I am getting sick by the A/C running 24 hours a day and the mold

and elgar being sucked up into the dorm; In the summer it can get really hot outside and the A/C system will not shut down and run and run and does produce water under the A/C unit and I can see mold forming by the intake return air, that does feed air into the dorms and I have been sick over this issue, as well as other inmates; see medical records LeBlanc Unit; In the winter time it will be cold out and the outdoor temp will not be the same as the indoor temp and the same in the summer months; Hopeto not go to the court over this issue; I am the person pertaining to A/C Suit §1983 civil action in cause no. 1:20-cv-0001 U.S. District Court, Braumont Division. Stop.

As you can see plaintiff tried his best to address the issues with the defendants and T.D.C.J. through the grievance process, but was denied as stated above and through out the grievance process. e.g. "Mattox, 851 F.3d 583 (6th Cir 2017)"; If a prisoner exhausts some of his claims after a proper federal lawsuit has been filed as to other claims, and then moves to amend his complaint to add the newly exhausted claims to policy behind the P.L.R.A.'s exhaustion requirements is still met because prison officials will have had a fair opportunity to address the new claims on the merits. *Id.*

Under the prison litigation reform act, prisoners may file supplemental complaints if the claims in question (1) have truly accrued since the beginning of the suit and (2) are exhausted per 42 U.S.C.S. § 1997(c)(1) before the supplement is filed. *Id.*

All winter long the heat has not kept the dorm plaintiff is on and because the new HVAC system installed does have heat as well, the thermostat is not working correctly because it is installed outdoors. How can a thermostat that is outside, and not inside the very dorm it is trying to control the temp in work. It has been in the "40 and 30 temps", in the past month and it has been cold in the dorm plaintiff and other inmates stay in and the following inmates back this claim up: (John W Hardin #2260399; I would like to add that sometimes I wake up at night cold and have to get up and add my jacket on top of already having on Thermal underwear, yes its cold C-7-T); (Jackson, Raymond

#1570860; I agree with the facts already expressed and noted.) C-27B;

(Howard Huss 00669806; The dorm temperatures are unbearably cold Especially at night and early morning when the outside temperatures are in the low thirties and upper 20's. I have to sleep with thermo bottoms, 2 pair of state pants, socks, a heavy long T-shirt 2 Thermo tops a state shirt and often have to get up because I am cold and put my Jacket on to get and stay warm all while sleeping under a sheet & 2 blankets, one of them doubled over. I Am 74 years old and suffer greatly with cold temperatures in the dorm when the outside temperatures drop below 50°. The heating system is inadequate to sustain acceptable dorm temps or is controlled improperly. The heating/AC unit also draws a portion of outside cold air (Fresh air) which during cold temperatures overwhelms the dorm & heating system with unheated air lowering the dorm temp to unbearably cold temperatures. The system needs to be Reengineered for use during extremely cold temps. my bunk is C21B)

Comments made by inmates above.

Plaintiff is asking for injunction relief to get the thermostats installed indoors, in each and every dorm on Le Blanc Unit to ensure the temps are maintained according to federal law standard, which plaintiff would hope be 68 deg and would Respectfully Request the Court set the standard for the Defendants to maintain the dorms, in the cold months of the year, at T.D.C.J. Le Blanc Unit.

Gillespie v. Civiletti, 629 F.2d 631, 642 (9th cir 1980) The Eighth Amendment guarantees adequate heating.

Cole v. Collier, 868 F.3d 354 (2017) It is well established that the Eighth Amendment guarantees inmates a right to be free from exposure to extremely dangerous temperatures without adequate remedial measures.

Because the new A/C system installed at Le Blanc Unit dorms for plaintiff and other inmates has built in heat as well, there is no reason the Defendants in this cause of action can not maintain heat in the cold months and A/C in the hot months.

The mold plaintiff seen outside the dorm, on the concrete pad, he believes was sucked up through the A/C and Heating duct work and ended up on the vent louvers and mold is a fungus that can harm to plaintiff and other inmates at Le Blanc Unit and the defendants seem to be deliberate indifference to the mold and algae issue, eg Board v. Farnham, 394 F.3d 469, 486 (7th cir 2005) Holding evidence that ventilation system was contaminated with fiberglass dust and mold supported an Eighth Amendment claim.

Plaintiff gave a fair chance to address the mold and elga issue and made false statements under the grievance process as plaintiff has sent evidence of black stuff that looks like mold under Exhibit A, from A/C and Heating duct ventilation systems.

Plaintiff respectfully request the court order the defendants to maintain the A/C and Heating system to be clear of any mold or elga that could harm the plaintiff and other inmates at LeBlanc unit.

Plaintiff Respectfully Request the court to ~~are~~ allow the amended pleading by plaintiff to be added as newly exhausted claims under Fed. R. Civ. P. 15 or allow plaintiff to move forward with a new §1983 civil action, under the allegations set forth under his grievance process #2021148636, and have the clerk send plaintiff a new §1983 civil action form.

Signed and Dated  
January-20, 2022

Respectfully Submitted  
Bruce Meryn Prose

### CERTIFICATE OF SERVICE

I hereby certify that the following motion to amend is being placed in the internal mail system at LeBlanc Unit and a true and correct copy is being sent to the defendants attorney Jeanine Coggeshal, Assistant Attorney General office, P.O. Box 12548, Austin, Texas 78711-2548 on the ~~21st~~ day of January-2022.

Jan-20, 22

To the U.S. District Court Clerk

Can you please submit plaintiff motion to amend to the court under §1983 Civil suit 1:20-cv-0001

Thank you for your time

Bonnie Mayman Prose

P.S. I did send a sample of some type of mold that has formed on the duct vent A/C and heating system, see Exhibit = A



This was removed from incoming vent above C-29-Top  
Bunk. A/C and Heating duct intake are system. This  
system is less than a year old.



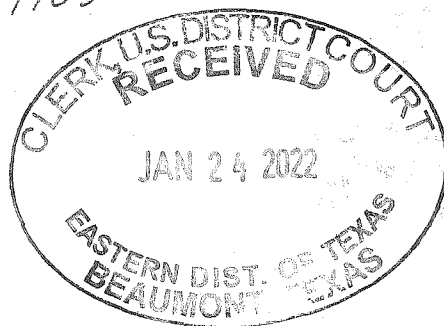


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Bruce Merryman  
LeBlanc Unit  
3695 FM 3514

Beaumont, TX 77705

Legal  
Mail



U.S. District Court  
Beaumont Division  
Office of the Clerk  
300 Willow Street, Room-104  
Beaumont, TX 77701-2217

77701-221729

NORTH HOUSTON TX 773

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